

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION</b>	)	<b>MDL No. 1456</b>
	)	<b>Master File No. 01-12257-PBS</b>
	)	<b>Judge Patti B. Saris</b>
	)	
<b>THIS DOCUMENT RELATES TO:</b>	)	
<b>State of California, <i>ex rel.</i> Ven-A-Care v.</b>	)	
<b>Abbott Laboratories, <i>et al.</i></b>	)	
<b>03-cv-11226-PBS</b>	)	
	)	

**PLAINTIFFS' MOTION TO FILE REPLY IN SUPPORT OF  
OBJECTIONS TO TAKING JUDICIAL NOTICE OF FACTS AND  
CONCLUSIONS SET FORTH IN DEFENDANTS' MOTION TO DISMISS**

Pursuant to Local Rule 7.1(b)(3), Plaintiffs respectfully move the Court for permission to file a reply in support of their Objections Pursuant to Rule 201(e) of the Federal Rules of Evidence to Judicial Notice of Facts and Conclusions Set Forth in Defendants' Motion to Dismiss. The reply and a proposed order are submitted contemporaneously with this motion.

On January 17, 2006, Defendants filed a joint Motion to Dismiss the First Amended Complaint-in-Intervention, and therein requested the Court take judicial notice of various publicly available records. On March 2, Plaintiffs filed their Objections, and on April 3, Defendants filed an Opposition to Plaintiffs' Objections.

Plaintiffs maintain that the importance of the issues raised by the pending Motion to Dismiss, as well as the need to reply to contentions made by Defendants in their opposition, justify submission of a reply.

Counsel for Plaintiff California<sup>1</sup> and Defense counsel<sup>2</sup> discussed the instant motion and intended reply brief on April 12, 2006. Defense counsel instructed the undersigned to state that Defendants do not presently take a position regarding Plaintiffs' reply brief.

Respectfully submitted,

BILL LOCKYER  
Attorney General for the State of California

Dated: April 17, 2006

By: /s/ Nicholas N. Paul  
NICHOLAS N. PAUL  
Supervising Deputy Attorney General  
California Department of Justice  
1455 Frazee Road, Suite 315  
San Diego, California 92108  
Tel: (619) 688-6099  
Fax: (619) 688-4200

**Attorneys for Plaintiff,  
STATE OF CALIFORNIA**

THE BREEN LAW FIRM, P.A.

BERGER & MONTAGUE, P.C.

By: /s/ James J. Breen  
JAMES J. BREEN  
5755 No. Point Parkway, Suite 39  
Alpharetta, Georgia 30022  
Telephone: (770) 740-0008  
Fax: (770) 740-9109

By: /s/ Susan Schneider Thomas  
SUSAN SCHNEIDER THOMAS  
1622 Locust Street  
Philadelphia, PA 19103  
Telephone: (215) 875-3000  
Fax: (215) 875-4604

**Attorneys for *Qui Tam* Plaintiff,  
VEN-A-CARE OF THE  
FLORIDA KEYS, INC.**

**Attorneys for *Qui Tam* Plaintiff,  
VEN-A-CARE OF THE  
FLORIDA KEYS, INC.**

---

<sup>1</sup> Nicholas N. Paul (Supervising Deputy Attorney General, California)

<sup>2</sup> Tina M. Tabacchi (Jones Day, Abbott)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	MDL No. 1456
IN RE PHARMACEUTICAL INDUSTRY	)	Master File No. 01-12257-PBS
AVERAGE WHOLESALE PRICE LITIGATION	)	
_____	)	Judge Patti B. Saris
	)	
THIS DOCUMENT RELATES TO:	)	
State of California, <i>ex rel.</i> Ven-A-Care v.	)	
Abbott Laboratories, <i>et al.</i>	)	
01-cv-12257-PBS and 03-cv-11226-PBS	)	
_____	)	

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO FILE REPLY IN  
SUPPORT OF OBJECTIONS TO JUDICIAL NOTICE OF FACTS AND  
CONCLUSIONS SET FORTH IN DEFENDANTS' MOTION TO DISMISS**

Upon consideration of Plaintiffs' Motion to File Reply in Support of Objections to  
Judicial Notice, and for good cause shown,

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted and that Plaintiffs may file  
a reply in support of their Objections Pursuant to Rule 201(e) of the Federal Rules of Evidence to  
Judicial Notice of Facts and Conclusions Set Forth in Defendants' Motion to Dismiss.

IT IS SO ORDERED.

Dated:

\_\_\_\_\_  
HONORABLE PATTI B. SARIS  
United States District Court Judge

**CERTIFICATE OF SERVICE**

I, Nicholas N. Paul, hereby certify that on April 17, 2006, I caused a true and correct copy of the foregoing, **PLAINTIFFS' MOTION TO FILE REPLY IN SUPPORT OF OBJECTIONS TO TAKING JUDICIAL NOTICE OF FACTS AND CONCLUSIONS SET FORTH IN DEFENDANTS' MOTION TO DISMISS; [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO FILE REPLY IN SUPPORT OF OBJECTIONS TO JUDICIAL NOTICE OF FACTS AND CONCLUSIONS SET FORTH IN DEFENDANTS' MOTION TO DISMISS** to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: April 17, 2006

/s/ Nicholas N. Paul  
NICHOLAS N. PAUL  
Supervising Deputy Attorney General